

1 June 9, 2003  
2 REPORT TO THE HONORABLE  
3 MAYOR AND CITY COUNCIL  
4 SUCCESSFUL DEFENSE OF LITIGATION:  
5 TRI MINH NGUYEN v. CITY OF SAN DIEGO, ET. AL.  
6 SAN DIEGO SUPERIOR COURT CASE NO. GIC 788272

## 7 INTRODUCTION

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9 Plaintiff, a 42-year old Vietnamese immigrant, sued the City and five SDPD officers for  
10 battery, violation of his constitutional rights, and negligence after he was severely injured during  
11 the course of an arrest at the City Heights apartment of his ex-wife. The case was tried by a  
12 Superior Court jury, with a defense verdict returned on all counts on May 30, 2003.

## 13 FACTS

14 On the morning of May 26, 2001, Plaintiff stabbed his ex-wife in her family's apartment  
15 in the course of a scuffle over a knife during an unsuccessful attempt to convince her to reconcile  
16 with him. Two of the family's three children took their mother to the hospital, where the ER nurse  
17 notified police of a suspected domestic violence incident. The responding officer interviewed the  
18 mother and two children, all of whom told him that Plaintiff had stabbed the victim, had  
19 threatened to kill himself, and was holding a younger son hostage in the family apartment. Police  
20 gathered at the scene and spent more than two hours trying to convince Plaintiff, who was holding  
21 the kitchen knife to his chest and threatening suicide, to surrender to arrest. When Plaintiff  
22 refused to follow through on commitments he made to the negotiating sergeant, a team of four  
23 officers made a dynamic entry into the apartment and, after Plaintiff failed to obey their verbal  
24 orders to drop the knife, shot him three times with their less-lethal beanbag shotguns.  
25 Unfortunately, one of the beanbag rounds lodged in Plaintiff's left eye, causing the loss of that  
26 eye and moderate brain damage as well.

## 27 LITIGATION

28 Plaintiff contended that the police arrest action constituted excessive force in violation of  
his Fourth Amendment rights; was poorly conceived and thus negligent; and also constituted a  
battery. The City argued that the force used was at all times reasonable and that the sole cause of  
the injuries was Plaintiff's refusal to do what the police rightly demanded that he do.

The Plaintiff previously made a statutory demand for settlement of \$2.5 million, which  
was rejected by The City Council. At trial, Plaintiff asked for damages of \$8-10 million.

The nearly month-long jury trial was conducted before San Diego Superior Court Judge  
Ronald S. Prager. Alvin Gomez of Contreras & Gomez represented Plaintiff, and Deputy City  
Attorney Richard A. Ostrow represented the City and all of the officers. After two of the five  
officers were dismissed upon defense motion, the jury rejected the civil rights action by 12-0 vote  
for two of the officers; and 11-1 for the third; unanimously rejected the battery claim against both  
of the shooting officers, and rejected the negligence claim against the same two officers. The  
sergeant who served as the scene supervisor was found negligent by a 9-3 count, but the jury  
found unanimously that the negligence was not a legal cause of Plaintiff's injuries. Thus, no  
damages were assessed against the City.

Respectfully submitted,

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CASEY GWINN, City Attorney